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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,959	12/22/2000	Krishna Venkatraman	DEM1P005	7256
36088	7590	11/22/2005	EXAMINER	
KANG LIM			PATEL, JAGDISH	
3494 CAMINO TASSAJARA ROAD #436			ART UNIT	
DANVILLE, CA 94306			PAPER NUMBER	

3624

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/741,959	<b>Applicant(s)</b> VENKATRAMAN ET AL.	
	<b>Examiner</b> JAGDISH PATEL	<b>Art Unit</b> 3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/3/05</u>   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. This communication is in response to amendment filed 8/25/05.

***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/25/05 has been entered.

***Response to Amendment***

3. Claims 1-4 have been amended per request.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejections. In response to applicant's argument that Ouimet does not teach or suggest a method for generating a preferred set of prices using activity-based costs to determine a local optimum for the preferred set of prices which maximize profit a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from

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the prior art. In the instant case the limitation of claim 1 “that will provide a local optimum for the preferred set of prices, and wherein the local optimum for the preferred set of prices maximizes profit” are intended results of the “preferred set prices”. The claimed invention fails to specify any limitations (process steps), which would actually achieve these intended results. No further consideration is given to this intended result in analysis of the claims. In order to overcome this deficiency, one or more process steps concerning generation of the local optimum for the preferred set of prices must be implemented.

Note that dependent claims 2-4 also inherit this deficiency.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites limitation “the generation of the local optimum for the preferred set of prices..” which lacks antecedent basis in the claim because claim fails to recite that the local optimum is generated. Claim 1, as explained, only suggests (without positively reciting generation of the local optimum) that the preferred set of prices will provide a local optimum, which is intended result or intended objective of the preferred set of prices.

Dependent claims 3-4 also inherit this deficiency.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Ouimet et al. (US 6094641).

As per claim 1 Ouimet (641) teaches a method for determining a preferred set of prices for a plurality of products comprising:

Receiving using a computer system a plurality of demand coefficients;

Receiving cost data including activity-based costs;

Generating using the plurality of demand coefficients and the cost data a preferred set of prices for the plurality of products..

[Note that this analysis does not consider the intended use limitation discussed above.]

(see col. 6 L 27 – col. 7 L 30 section under heading “Perceived Pricing”, the demand coefficients are defined in terms of demand function  $q = V q(\rho(p; \eta); X)$ ,  $p$  represents pricing history which inherently include cost data including activity-based costs (sales history), then the preferred set of prices for the plurality of products are calculated using equations

$\Gamma_u$ , weighting function is calculated as:

$$\Gamma_u = 1 + \eta \ln (D_u / D_{\max})$$

The preferred set prices for the plurality of products is then calculated as:

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$$\rho = \sum N_u D_u \Gamma_u$$

Note also that perceived prices are interpreted as preferred set of prices since the claim does not further define this term.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

11/14/05